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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on March 6, 2001, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

Tom Flesh, President of the Board, called the General meeting to order at 8:45 a.m.

Present:	Edward Bayuk	Tom Novi
	Wendy Brogin	Executive Director
	Robert T. (Tom) Flesh	Robin P. Parker
	Frederick E. (Fritz) Hitchcock	Staff Counsel
	Alan J. Skobin	Michael Dingwell
	Solon C. Soteras	Staff Counsel
	Glenn E. Stevens	
	David W. Wilson	

Mr. Flesh welcomed Alan J. Skobin, Esq., as a newly appointed dealer member. Mr. Skobin's Governor appointment replaced Joseph D. Putnam.

3. APPROVAL OF THE MINUTES FROM THE JANUARY 18, 2001, SPECIAL AND GENERAL MEETINGS

Mr. Hitchcock moved to adopt the January 18, 2001, Special Board meeting minutes. Mr. Stevens seconded the motion. Mr. Skobin and Mrs. Brogin abstained from voting because they were not present at the January 18, 2001, Special meeting. The motion carried unanimously.

Mr. Stevens moved to adopt the January 18, 2001, General Board meeting minutes. Mr. Wilson seconded the motion. Mr. Skobin and Mrs. Brogin abstained from voting because they were not present at the January 18, 2001, General meeting. The motion carried unanimously.

4. DISCUSSION OF UPCOMING LEGISLATION AFFECTING THE NEW MOTOR VEHICLE INDUSTRY BY SENATOR TOM MCCLINTOCK - BOARD DEVELOPMENT COMMITTEE

Since Senator McClintock had not yet arrived for the meeting, Mr. Flesh suggested moving onto the next agenda item.

5. DISCUSSION WITH RICK VARGAS, ASSISTANT SECRETARY FOR RAIL AND TRANSIT, BUSINESS, TRANSPORTATION & HOUSING AGENCY CONCERNING ISSUES RELATED TO THE AUTOMOBILE INDUSTRY AND THE BOARD - BOARD DEVELOPMENT COMMITTEE

Since Mr. Vargas had not yet arrived for the meeting, Mr. Flesh suggestion moving onto the next agenda item.

6. BOARD MEMBER EDUCATION CONCERNING THE FAIR POLITICAL PRACTICES COMMISSION REPORTING REQUIREMENTS AND ANNUAL STATEMENTS - BOARD DEVELOPMENT COMMITTEE

Mr. Dingwell made a brief presentation on the Political Reform Act and the members' filing of their Statement of Economic Interest (Form 700). Mr. Dingwell reminded the members that the deadline to file the Form 700 was April 2, 2001. Additionally, he addressed the statutory changes effective January 1, 2001.

5. DISCUSSION WITH RICK VARGAS, ASSISTANT SECRETARY FOR RAIL AND TRANSIT, BUSINESS, TRANSPORTATION & HOUSING AGENCY CONCERNING ISSUES RELATED TO THE AUTOMOBILE INDUSTRY AND THE BOARD - BOARD DEVELOPMENT COMMITTEE

Mr. Vargas, Assistant Secretary for Rail and Transit, Business,

Transportation & Housing Agency ("Agency") spoke with the members and audience on issues related to Agency and the Board. Mr. Vargas indicated that he has functional oversight for both the Department of Motor Vehicles and the Board. Mr. Vargas commended the staff on behalf of the Agency Secretary for working closely with the California Motor Car Dealers Association to reduce energy consumption in the automotive industry. Mr. Vargas was also available to answer member and audience questions.

4. **DISCUSSION OF UPCOMING LEGISLATION AFFECTING THE NEW MOTOR VEHICLE INDUSTRY BY SENATOR TOM MCCLINTOCK - BOARD DEVELOPMENT COMMITTEE**

Senator Tom McClintock spoke with the members and audience on issues concerning the energy crisis and the state highway program. Senator McClintock was also available to answer member and audience questions.

7. **CONSIDERATION OF PETITION FOR ISSUANCE OF AN ORDER TO THE DEPARTMENT OF MOTOR VEHICLES TO CONDUCT AN INVESTIGATION OF BUSINESS PRACTICES OF PORSCHE CARS NORTH AMERICA, INC**

STEVE TAUB INC. dba STEVE TAUB PORSCHE vs. PORSCHE CARS NORTH AMERICA, INC.

Petition No. P-436-01

Consideration of Petitioner's request that the Board issue an order directing the Department of Motor Vehicles to conduct an investigation of matters that the Board deems reasonable, including without limitation, the matters alleged in the Petition, and actual or potential violations of Vehicle Code section 11700, *et seq.*, and make a written report on the results of the investigation and any recommendation for a penalty, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Randall L. Hite, Esq., of Randall L. Hite & Associates represented Petitioner. Marjorie E. Lewis, Esq., of Gibson, Dunn & Crutcher LLP represented Respondent.

The Public members of the Board deliberated in open session. Mr. Stevens moved to deny the relief requested in the Petition. Mrs. Brogin seconded the motion. Mr. Soteras was opposed. The motion carried by a four-to-one vote. Mr. Stevens moved to dismiss the Petition without prejudice. Mrs. Brogin seconded the motion. The motion carried unanimously.

8. **DISCUSSION OF ENERGY CONSERVATION ACTIONS TAKEN BY THE BOARD STAFF - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the energy conservation actions taken by the Board staff. Miss Kindel, Office Manager, reported that the staff has, among other things, reduced the overall lighting in the office by 40-50% and unplugged an old refrigerator used by the staff. These energy conservation measures will be incorporated for the long-term and not just in response to the present energy situation.

9. **CONSIDERATION OF NEW MOTOR VEHICLE BOARD MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker, and proposed mission and vision statements. Mr. Novi reported that the Department of Motor Vehicles' ("DMV") mission makes no reference to the Board and that the Board's mission should be reflective of its unique responsibilities. Through a coordinated effort with Agency, the statements were developed. Mr. Novi proposed inserting the word "motor" before "vehicle industry" in both the mission and vision statements. Mr. Hitchcock moved to adopt the mission and vision statements as amended. Mrs. Brogin seconded the motion. The motion carried unanimously.

10. **CONSIDERATION OF A STANDARDIZED PAMPHLET WHICH EXPLAINS THE BOARD, ITS HISTORY AND DISPUTE RESOLUTION FUNCTIONS TO DEALERS, MANUFACTURERS, AND THE GENERAL PUBLIC (NON-ATTORNEYS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Mike Dingwell, and a draft pamphlet which explains the rights of dealers in protest, petition, and appeal matters. Mr. Dingwell explained that the pamphlet could be disseminated at California Motor Car Dealer Association ("CMCDA") field meetings and dealer roundtables. It could be used as another tool to promote the Board. Mr. Soteras suggested that the staff set up a booth at the CMCDA State Convention, and Mr. Novi could make a few remarks at the breakfast meeting. Mr. Novi indicated that he would speak to the staff of the CMCDA concerning Mr. Soteras' suggestion. Mrs. Brogin indicated that she had a few suggestions that she would review with Mr. Dingwell.

11. **REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 2ND QUARTER OF FISCAL YEAR 2000-2001- FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Board's financial condition for the second quarter of fiscal year 2000-2001. Miss Kindel reported that the Board's expenditures were 31% of its allocated budget.

12. **CONSIDERATION OF PROPOSED REVISIONS TO BOARD CASE MANAGEMENT PROCEDURES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with an update and memorandum from Tom Novi and Mike Dingwell concerning proposed revisions to the Board's case management procedures. Mr. Dingwell reported that in November 2000, the memorandum was sent to the Board's public mailing list seeking comments. No comments were received. On January 17, 2001, the Board received a written comment from Michael J. Flanagan, Esq., concerning the Board's Order to Show Cause procedures. This matter was postponed until today to allow the members an opportunity to review Mr. Flanagan's comments.

Several members of the audience requested copies of the memoranda provided to the Board members. Copies were made available and this matter was postponed until later in the meeting.

13. **DISCUSSION CONCERNING PENDING LEGISLATION IMPACTING THE BOARD AND OF GENERAL INTEREST - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board and bills of general interest. The summary analyzed the current law, the proposed legislation, and the impact on the Board. Ms. Parker provided an overview of Senate Bill 774 (Senator Margett) which would add recreational vehicles to the list of licensees within the Board's jurisdiction. Ms. Parker briefly addressed Senate Bill 91 (Senator Figueroa) and Senate Bill 481 (Senator Speier). Updates will be provided to the members at the next meeting.

14. **SELECTION OF BOARD MEETING DATES FOR THE REMAINDER OF 2001**

The Board members tentatively selected the following Board meeting dates: (1) June 12, 2001, Los Angeles; (2) September 6, 2001, San Jose; and (3) November 8, 2001, Sacramento. The staff is hopeful that the members can tour the NUMMI Plant in San Jose as part of its continuing Board member education. The members discussed the complex logistics of touring Joe Putnam's Burlingame dealership. Mr. Wilson then offered the members a tour of his Lexus dealership in Palm Springs in conjunction with the CMCD State Convention and the Board's April 27, 2001, General meeting, which was agreed to by the Board members.

15. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.

- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters which identified all pending projects, the Board manager and committee assigned, estimated completion date, and status.

The members were also provided with a copy of the Executive Director's Report.

Mr. Novi reported that the National Association of Motor Vehicle Board's and Commissions had asked the Board to host its fall workshop in Sacramento. Mr. Novi also reported that the recruitment bulletin for General Counsel had been published, was being distributed, and the filing deadline was April 2, 2001. The members were provided with a March 2001 Supplement to the Guide to the New Motor Vehicle Board. Mr. Novi reported that the entire Guide would be updated later this year. Lastly, Mr. Novi indicated that he would coordinate with Mr. Skobin concerning Board committee assignment and this would be agendaized for the next meeting.

Mr. Hitchcock suggested that the number of new matters filed since the last meeting be reported on the Executive Director's Report. Mr. Novi indicated that staff would prepare a summary of the Executive Director's Report which would include the number of new cases filed, for future Board meetings.

Mr. Stevens indicated that he wanted to issue an Order to Show Cause in each of the following matters:

1. Quaid Imports, dba Quaid Nissan vs. Nissan Motor Corporation, U.S.A.
Protest No. PR-1653-99;
2. Gardena Nissan, Inc., dba Gardena Nissan vs. Nissan North America, Inc.
Protest No. PR-1715-00;
3. Ogner Motor Cars, Inc. vs. Ferrari North America, Inc.
Protest No. PR-1717-00; and,
4. Ferrari of Los Gatos, LLC vs. Ferrari North America, Inc.
Petition No. P-427-99

(Subsequent to the meeting, Mr. Stevens asked that Ferrari of Los Gatos, LLC vs. Ferrari North America, Inc., Petition No. P-427-99, be deleted from the list of cases).

Consideration of the issuance of the Orders to Show Cause was delayed until after consideration of Agenda item #12.

12. **CONSIDERATION OF PROPOSED REVISIONS TO BOARD CASE MANAGEMENT**

PROCEDURES - POLICY AND PROCEDURE COMMITTEE

Michael J. Flanagan, Esq., discussed the Board's process for issuing Orders to Show Cause to Protestants/Petitioners and the risk that the Board would dismiss the matter if it was not timely responded to. Mr. Flanagan indicated that oftentimes, it is the Respondent who delays in proceeding to a hearing in a case. Ken Murphy, Esq., and Mr. Flanagan indicated that there were two additional issues they wished to discuss with the Board: (1) motions to dismiss; and, (2) consideration of certain types of petitions. The Board members indicated that it would postpone considering this matter until after additional comments were submitted to the Board. Messrs. Flanagan and Murphy indicated that they would prepare a joint submission with other attorneys who specialize in the automotive industry. Marjorie E. Lewis, Esq., who was present in the audience, indicated that she would participate in the joint submission of additional comments. Counsel was given until Monday, April 9, 2001, to submit additional comments for consideration at the Board's April 27, 2001, General meeting, in Indian Wells, California.

15. EXECUTIVE DIRECTOR'S REPORT

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

The members continued their discussion of the Orders to Show Cause requested by Mr. Stevens. Mr. Flesh suggested that an Order to Show Cause also be issued in Cypress Coast Ford Lincoln-Mercury vs. Ford Motor Company, Ford Division and Lincoln-Mercury Division, Protest No. PR-1589-97. Mr. Stevens requested that the staff prepare the orders with the following language:

The Orders to Show Cause shall request both parties to submit a joint statement in writing to the Board detailing the status of the case, a proposed date for disposition of the case, and a timetable outlining the dates for discovery completion and a date for a hearing on the merits. The joint response submitted shall become the order of the Board.

16. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 11:52 a.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
Robert T. (Tom) Flesh
President
New Motor Vehicle Board